



PRICE DANIEL
ATTORNEY GENERAL

THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

December 16, 1948

Hon. C. H. Cavness
State Auditor
Austin, Texas

Opinion No. V-740.

Re: The legality of full-time salaried State employees also being Justices of the Peace or Weathermen for the Federal Government.

Dear Sir:

Your request for an opinion by this office upon the above subject matter is as follows:

"In our audit of the accounts of one of our State institutions we have found that two full-time salaried employees are holding at the same time other positions as follows:

1. Justice of the Peace
2. Weatherman for the United States Government

"We understand that both of these are only part-time arrangements that do not interfere with the respective State full-time jobs, but we believe we should ask your opinion as to whether either or both of these instances are in conflict with the provisions of Section 33 of Article 16 of the State's Constitution."

Section 33 of Article XVI of the Constitution contains the following:

"The Accounting Officers of this State shall neither draw nor pay a warrant upon the Treasury in favor of any person, for salary or compensation as agent, officer or appointee, who holds at the same time any other office or

position of honor, trust or profit, under this State or the United States, except as prescribed in this Constitution

Section 40 of Article XVI says that:

"No person shall hold or exercise, at the same time, more than one civil office of emolument, except that of Justice of Peace. . . ."

A Justice of Peace is one of those officers referred to in Section 33 where it says no persons shall be paid out of the Treasury who hold another office or position . . . "except as prescribed in this Constitution." The Justice of Peace, therefore, may hold both positions under Section 40 and be paid under Section 33 as a State employee as an express exception. It is assumed that no question of incompatibility is involved.

Your letter does not give the facts as to the nature of the employment of the U. S. Weatherman. If he is simply an unpaid observer who holds no position of honor or trust, he is entitled to his state pay under Section 33. On the other hand, if he holds a federal appointment which is one of honor or trust, or one which carries remuneration, he may not be paid from the Treasury for his state job. Section 33 says plainly that a state employee may not be paid from the Treasury "who holds at the same time any other office or position of honor, trust or profit under this state or the United States." Similar rulings have been required by Section 33 with regard to other state employees who simultaneously held federal jobs: Agent of Census Bureau (O-58); Deputy U. S. Game Warden (O-1421); U. S. Government printer (O-3542); War Labor Board (O-5232); civil service job (O-5317 and O-7813). Enclosed is a copy of Opinion O-6232 which cites many of these opinions.

SUMMARY

The office of Justice of Peace is expressly exempt in Section 40 of Article XVI, Texas Constitution, which prohibits the holding of more than one office. A Justice

of Peace may hold another civil office under Section 40 and be paid under Section 33 of Article XVI for his services as a State officer or employee. Section 33 exempts from its application those offices also exempt elsewhere in the Constitution, including Section 40. (No question of incompatibility involved.)

The accounting officers of this State may not pay a state employee from the Treasury who holds at the same time a position of honor, trust, or profit with the U. S. Government. If the U. S. Weatherman in question holds such a position he should not be paid for his state employment. If he is simply an unpaid observer, who holds no appointment, Section 33 has no application, and he may be paid for his state employment. Art. XVI, Sec. 33.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By


Ocie Speer
Assistant

OS:erc:wb

APPROVED:


Price Daniel
ATTORNEY GENERAL